THE HON'BLE MR JUSTICE

J.CHELAMESWAR

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WRIT PETITION No.12512 OF 1992

O R D E R

This writ petition is filed with a prayer as follows:

> "For the reasons stated in the accompanying affidavit the petitioner herein prays that this Hon'ble Court may be pleased to issue an order, direction or a writ particularly one in the nature of WRIT OF MANDAMUS restraining the respondents from claiming compensatory afforestation twice the non-forest land and also Rs.15,000/- per acre towards afforestation; and injunction restraining the respondents from interfering with the possession and enjoyment of the land by the petitioner pending disposal of the above writ petition, and injunction restraining the respondents from claiming compensatory afforestation twice the non-forest land and also Rs.15,000/- per acre towards afforestation pending disposal of the above writ petition and pass such further or other orders as this Hon'ble Court deems fit and proper."

There cannot be a better case than this to demonstrate the insane ways of the administration. The facts to be narrated would unfold a shocking and abominable state of affairs in the administration.

The petitioner is a 'Government Company' within the meaning of the said expression as contained under Section 617 of the Companies Act. The entire share capital of the petitioner company is contributed by the Government of India. It is a matter of history and public record that the petitioner company has various units generating electric energy and I am informed by the learned counsel for the petitioner that the company as on today has a total installed capacity of 40,130 mega watts. It would be rhetorical to make any statement regarding the importance of electric energy in the modern world. The Governments, both

Union and the State, recognized its importance and as part of their obligation to provide for the people of this country with the regular supply of such an important commodity, and have taken various steps for the generation and distribution of electric energy.

The Government of India thought it fit to float a separate Corporation (the petitioner company herein) to deal exclusively with the task of thermal power generation. A number of generating stations and plants have been set up by the petitioner, which generate electrical energy using thermal power.

As a part of the process of achieving the objectives for which the petitioner company was established, the petitioner company started a power generating station at Ramagundam in Karimnagar District. I am informed at the Bar that it started operation in the year 1979. As on date, the said generating station is functioning with an installed capacity of 2,500 mega watts.

For the purpose of establishing a generating station, obviously the petitioner company required large extents of land. It is stated in the affidavit filed in support of the petition that for the purpose of establishment of generating station, an extent of 10,500 acres of land was acquired by the petitioner.

One of the requirements of thermal power plant is the establishment of an ash pond to minimize the air pollution generated by the burning of the coal in the plant, the details of which may not be necessary. But the fact remains that the petitioner company approached the State of A.P. (2nd respondent) with a request to make available land for the purpose of constructing the ash pond. The Government of A.P. in two orders vide G.O.Ms.No.1340, Revenue (Q) Department, dated 03.04.1990 and G.O.Ms.No.1926, Revenue (Q) Department, dated 31.12.1979 alienated two parcels of land admeasuring Ac.590.00 gts and Ac.115.01 gts respectively in favour of the petitioner company for a consideration. The said extent of land according to the above-mentioned G.Os is under the various revenue survey numbers, the details of which are given in the said two G.Os. The State of A.P. handed over physical possession of the property to the petitioner company. Admittedly the consideration for alienation was also received by the State of A.P. Some time in August, 1986, the petitioner company started the construction of ash pond. In the interregnum, the Parliament enacted Forest Conservation Act, 1980 (for short `The Act of 1980').

The 4th respondent herein initially issued a notice to the Deputy General Manager (Civil Construction), dated 29.08.1986. The notice states that the Deputy Range Officer,

Ramagundam booked three cases against the petitioner company, for the various activities undertaken by it in the 'reserved forest' such as, laying of pipes, digging up of the land, etc. The notice demanded some unspecified amount of fine with a caution or a warning that entry into the lands specified in the notice is prohibited with a further threat that any further entry into the land or any activity to be taken up on the said land would attract action under the A.P. Forest Act, 1967 and "Central Soil Conservation Act, 1980". Out of curiosity, this Court enquired from all the counsel appearing in the matter for the various parties whether there exists any such enactment called Central Soil Conservation Act, 1980. The unanimous opinion is that no such enactment exists on the statue book.

The petitioner therefore approached this Court earlier in W.P.No. 486 of 1988 praying that the respondents herein be restrained from interfering with the construction of the ash pond. The writ petition was admitted and an interim injunction was granted. Finally the writ petition came up for hearing on 24.8.1992. The writ petition was disposed of. As per the affidavit filed in support of the present writ petition "with liberty to the petitioner to file a fresh writ petition to challenge the conditions imposed by the Ministry of Environment and Forests, Government of India."

Such an order it appears (I say so because a copy of the judgment is not made available to me) came to be passed by this Court in view of the fact that the construction of the ash pond came to be completed during the pendency of the writ petition without interference from the respondents in view of the interim orders passed in the said writ petition and also because that during the pendency of the writ petition (in view of a prolonged correspondence between the various parties to this writ petition), the State of Andhra Pradesh in the Department of Energy, Forests, Environment, Science and Technology dated 25.5.1988 passed GO Ms.No.172, directed the petitioner as follows :

"Government of Andhra Pradesh,

Abstract

National Thermal Power Corporation, Ramagundam – Diversion ..... Of Forest land in Karimnagar District for the construction of Ash Pond and laying of pipeline for Ramagudnam Super Thermal Power Project – Orders – Issued.

ENERGY, FORESTS, ENVIRONMENT, SCIENCE AND TECHNOLOGY
(FOR.I) DEPTT.

G.O.Ms.No. 172, Dated : 25.5.1988,

Read the following :

1. G.O.Ms.No. 1926, Revenue (Q) Department, dt. 31.12.1979.

2. G.O.Ms.No.1340, Revenue (Q) Department, dt. 3.4.1980.

3. Government Letter No.35246/For.I/86-6, F.A.F. Deptt., dated 4.8.1987.

4. From the Prl. Chief Conservator of Forests, Letter No.79233/86-F3, dated 30.6.1987.

5. From the Govt. of India, Ministry of Environment and Forests, Department of Environment, Forests & Wildlife, New Delhi, Letter No.8-259/87-FC, dated 6/7th April, 1988.

6. From the Prl. Chief Conservator of Forests, Letter No.99233/86-F3, dated 19.4.1988.

ORDER :

In his letter fourth read above, the Principal Chief Conservator of Forests has reported that the District Collector, Karimnagar has informed him that an area of 1600 acres of land has been handed over to the National Thermal Power Corporation authorities in the revenue villages of Kundanpalli and Magalpahad of the Karimnagar District during 1979 and the Government approved the alienation in their orders first and second read above for the purpose of construction of Ash Pond and its allied other works. It is also reported that the National Thermal Power Corporation authorities started the work on pipelines for ash and ash-pond for the Stage I work in December, 1981 and when the National Thermal Power Corporation took up the 2nd phase in August, 1986 it was noticed that the area stated to be transferred and handed over to the National Thermal Power Corporation authorities is included in notified Reserved Forest included in Mallialpalli Reserve Forest, …… and Kannal Reserve Forest which form parts of S.Nos. 453, 479 and 483 of Kundanpalli and S.No. 1 and 14 of Mogalpahad villages with a total extent of 380 acres. On the request made by the National Thermal Power corporation authorities and on the proposal of the Principal Chief Conservator of Forests the Government in their letter third read above sought the prior approval of the Government of India under Sec. 2 of the Forest Conservation Act, 1980 requesting to obtain and communicate to the State Government for diversion of Forest lands to an extent of 380 acres falling partly in Compartment Nos. 514, 491, 492 and 709 of Mallialpalli, Raidandi and Kannal Forest Blocks of Karimnagar West Division to the National Thermal Power Corporation authorities for construction of Ash Pond and laying ash pipe lines and its allied works subject to certain conditions.

In their letter fifth read above, the Government of India have since conveyed their approval for diversion of 152 ha. of forest land in Karimnagar district for construction of Ash Pond and Ash Pipeline for Ramgundam Super Thermal Power Project, under Section 2 of the Forest (Conservation) Act, 1980 subject to the conditions mentioned therein.

In the circumstances, the Government direct for diversion of 152 ha. of Forest Land in Karimnagar district for construction of Ash Pond and Ash Pipeline for Ramagundam Super Thermal Power Project, subject to the following :

1. The National Thermal Power Corporation shall pay to the Forest Department the value of tree growth if any existing therein and also the capitalized value of the Forest land;

2. They shall also pay to the Forest Department the cost of …….. and transport of forest produce to the Forest Depots, if any;

3. The legal status of the land will remain unchanged.

4. No residential colonies or construction of buildings and roads will be allowed in the area.

5. They shall abide by any other conditions that may be imposed by the Forest Department from time to time for the protection and improvement of flora and fauna in the area;

6. The National Thermal Power Corporation authorities should transfer and hand over the compensatory area to the Forest Department and also deposit the required amount for raising plantations and its maintenance as assessed by the Forest Department;

7. Compensatory afforestation should be raised in twice the non-forest area with mixed species. There should be no plantation of Eucalyptus. Additional non-forest area for compensatory afforestation should be identified and afforested;

8. Cost estimates for compensatory afforestation should be updated.

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Hence the present writ petition.

Heard the learned counsel for the petitioner and Smt.C.Vani Reddy, Standing Counsel for Central Government appearing for Respondent No.1 and learned Government Pleader for Forests for the respondents 2 to 5.

The compensatory afforestation referred to in the prayer of the writ petition and also in the G.O., referred to above is a concept propounded, according to the respondents 1 to 4 on the basis of certain guidelines said to have been issued under the Act of 1980. In spite of a specific query from the Court, none of the Counsel appearing for the respondents could point out the authority of law under which such guidelines were issued. It is therefore necessary to briefly examine the scope and object of the Forest Act, 1980. Though the enactment was published in the Gazette of India on the 2nd December, 1980, by virtue of a fiction under section 1(2), the Act is deemed to have come into force on 25.10.1980, in other words, with retrospective effect. Section 2 of the Act of 1980 creates an embargo on the power of the State Government to pass any order directing; that any area which is a `reserved forest' within the meaning of the appropriate State law shall cease to be a 'reserved forest.' It also places a further embargo on the power of the State government to permit the user of any forest land for a non-forest purpose. The expression non-forest purpose itself is defined under the Explanation in Section 2. However, Section 2 enables the State Government to take any such decision referred to earlier with the prior approval of the Central Government. In other words, the embargo created under sub-section 2 is not absolute but can be got over by the State Government by taking the prior approval of the Central Government before any such decision referred to earlier is taken. Section 3 of the

Act contemplates the constitution of a committee to advise the Government of India in any matter where the prior approval of the Government of India is sought by any State Government under Section 2. Section 3(a) and 3(b) provide for penalties for the contravention of the Act. Section 4 empowers the Government of India to make necessary rules for the implementation of the provisions of the Act of 1980.

In exercise of the power under Section 4, the Government of India made rules called the Forest Conservation Rules, 2003. Rule 3 deals with the composition of the Committee contemplated under Section 3. Rule 4 deals with the terms of appointment of the non-official members of the said committee. Rule 5 deals with the conduct of the business of the committee. Rule 6 deals with the procedure to be adopted by any `user agency' - a defined expression under Rule 2(h) - which wants to use any forest land for a non forest purpose. It stipulates an application in the prescribed form to be sent to the State Government. The State Government on receipt of such a request is required to forward the proposal to the Government of India. On receipt of such an application, the Government of India is mandated to refer the application under Rule 7 to the Committee contemplated under Section 3 for its advice.

Under Rule 7, the Committee was required to have due regard to the following factors.

a. Whether the forests land proposed to be used for non-forest purpose forms part of a nature reserve, national park wildlife sanctuary, biosphere reserve or forms part of the habitat or any endangered or threatened species of flora and fauna or of an area lying in severely eroded catchment;

b. Whether the use of any forest land is for agricultural purposes or for the rehabilitation of persons displaced from their residences by reason of any river valley or hydro-electric project;

c. Whether the State Government or the other authority has certified that it has considered all other alternatives and that no other alternatives in the circumstances are feasible and that the required area is the minimum needed for the purpose; and

d. Whether the State Government or the other authority undertakes to provide at its cost for the acquisition of land of an equivalent area and aforestation thereof."

Rule 7 sub-rule (3) also authorizes the Committee to suggest any conditions or restrictions

of use of any forest land for any non-forest purpose which conditions in the opinion of the Committee would minimize the adverse environmental impact. After the receipt of the advice of the Committee, the Government of India is required to take a final decision whether to grant or reject the approval contemplated under section 2 of the Act of 1980. If that is the broad scheme of the Act and the Rules framed thereunder, it is not known as to what is the authority of law under which the guidelines referred to earlier have been issued. At best there can be guidelines to be kept in mind by the Central Government while taking a decision before granting or rejecting the approval in a given case. In my view, the guidelines do not create any legal obligations on any user agency, nor can they be blindly applied in every case where the approval of the Central Government is sought.

Be that as it may, the legislative field of forests is to be found in List III of the 7th Schedule of the Constitution under Entry 17A. Both the Parliament and the concerned state Legislature would be competent to make laws regarding forests. The entry came to be inserted in the concurrent list by the 42nd Amendment Act, 1976. Prior to the amendment, the subject matter was assigned to the State legislature under Entry 19 of List II. In exercise of the power under the original entry, the State of Andhra Pradesh made Act 1/1967 called the A.P. Forest Act (for short hereinafter referred to as 'the State Act'). Section 3 of the State Act empowers the State Government to constitute any land to be a reserved forest, the procedure for such a constitution is specified under sections 4 to 15. Section 4 authorises the State Government to issue a preliminary notification indicating its proposal to constitute any land to be a reserved forest. Section 6 stipulates that a proclamation be made in the manner stipulated therein specifying the intention of the government to constitute a reserve forest and inviting objections from interested persons for such constitution. Section 7 of the Act bars the acquisition of any rights (except those rights which accrue by succession or the rights which accrue under a contract with the government), after the notification under Section 4 is issued. Under section 8 of the Act, the Forest Settlement Officer, is required to enquire into the claims made by any interested person pursuant to the proclamation made under Section 6. Section 10 deals with the nature of the claims that can be made. It recognizes claims of rights in or over any land which is proposed to be constituted a reserved forest. Under Section 10 the Forest Settlement Officer after an enquiry referred to under Section 8 is required to pass an order either admitting or rejecting any claim made after recording the reasons therefore. Sub-section (2) of Section 10 stipulates that if a claim is admitted either wholly or in part, the Forest Settlement Officer can either exclude that portion of the land from the limits of the proposed reserved forest or determine the amount

of compensation payable for the right on the basis of which the claim is made or acquire the land in the manner provided under Land Acquisition Act over which a valid claim is found to exist. Thereafter, under Section 15, a final notification specifying definitely the limits of the forests declared to be reserved forests.

The other provisions of the Act may not be relevant for the purpose of the present enquiry except Section 23 which authorizes the State Government to direct by a notification that any reserved forest or any portion thereof shall cease to be a reserved forest with effect from such date as may be notified.

From the above analysis of the provisions of the State Act, it is clear that the State Government is vested with the power both to constitute a reserved forest as well as denotify any area which is already constituted a reserved forest. It is this power of the State Government to denotify any area which is already constituted into reserved forest that is restricted by Section 2 of the 1980 Act. Prior to the commencement of the 1980 Act, there was no embargo on the power of the State Government to delete any area from out of an area constituted to be a reserved forest barring the embargo of a bonafide exercise of such power.

That is the legal position emerging from the analysis of the above two enactments, which is required to be applied to the facts of the present case. It is unfortunate that the various departments of the government of the State of Andhra Pradesh do not work in harmony. Insofar as the land in question in dispute in this case is concerned, the forest department represented by respondents 2 & 3 herein asserts that the land is a part of the reserved forest by virtue of some notifications issued in the year 1965 and 1971. I proceed on the assumption that as a matter of fact, the lands in dispute were notified under the A.P. Forest Act constituted it into a reserved forest as claimed by the respondents 2 and 3. The Revenue department (represented by the 4th and 5th respondents herein) of the State of Andhra Pradesh thought it fit to alienate the land in favour of the petitioners under the two government orders referred to earlier for a purpose specified in the said GOs - construction of the ash pond.

De hors the provisions of the 1980 act, various activities enumerated under Section 20 of the State Act, are proscribed activities if indulged in, and attract penalties of both imprisonment and fine. Cutting of the trees, clearing or breaking up of land for any purpose

are some of the activities proscribed under Section 20. Notwithstanding the sanctions created by the Legislature against such activity in the reserved forest, the State of Andhra Pradesh thought it fit to alienate the land in dispute in favour of the petitioner for a specified purpose of construction of an ash pond-a purpose which is inherently inconsistent with the scheme of the Section 20. While the purpose of the Forest Act is to preserve the forests in the State of Andhra Pradesh, which is felt necessary in the larger public interest, obviously the Government of Andhra Pradesh believed that an equally competing or a superior public interest exists in enabling the petitioner to establish a thermal power plant. It therefore alienated the land in dispute in favour of the petitioner, a decision which is undoubtedly within the powers of the State Government assigned to it under the constitution. In which case, such a decision in my view can only be treated as a decision under Section 23 of the Act to delete the areas in dispute which till then formed part of the reserved forest. At the time of such a decision, the State Government made an alienation subject only to one condition of payment of monetary consideration.

Therefore by the time the Parliament made the Act of 1980, the land in dispute stood excluded from the purview of the operation of the A.P. Forest Act. Hence, the 1980 Act of the Parliament in my view would have no application to the lands in question which stood already excluded from a constituted reserve forest under the State Act.

The voluminous correspondence that took place between the parties to this litigation only demonstrates the utter non application of mind to the core issue and absolute ignorance of law and apathy for the rights of the petitioner. By an accident that the petitioner happens to be a Corporation owned and controlled by the Union of India with vast financial resources to squander about in this kind of litigation. Both the officers of the State of Andhra Pradesh dealing with the problem and the Union of India never thought it fit to examine the core issue of the applicability of the 1980 Act to the lands in question. The insensitivity of the administration is further highlighted in the argument of respondents 2 and 3 that as Section 23 of the A.P. Act requires a notification to exclude any piece of land from the notified reserved forest and as no such notification was issued by the State, the petitioner cannot claim that the land is excluded from the reserved forest. It sounds very fine as a proposition of law, but in the background of the fact that the alienation was made by the State under government orders duly signed by the concerned Secretary of the Revenue Department, the failure to issue an appropriate notification in the gazette under Section 23 of the State Act only highlights how hyper technical and insensitive to public interest the administration can be. The land was admittedly alienated for the purpose of construction of the ash pond

which activity is impermissible unless the land is excluded from the rigors of Section 20 of the A.P. Forest Act. If really the Government believed that it would be detrimental to permit either the petitioner or its officers to carry on any activity unconnected with the forest purpose in the land in dispute, the Government ought not to have alienated the land in favour of the petitioner with full knowledge of the purpose for which the petitioner seeks to put the land to. Yet, the forest department, obviously, believes that these various departments of the government are independent sovereign entities within the State Government and asserts the illegality of the alienation made by the revenue department. To say the least, a shameful state of affairs and an utter lack of coordination among the various departments of the government. If this be the plight of corporation owned by the Government of India in handling the issue, this Court can well imagine what misery it would be for an ordinary citizen, who should have the misfortune of dealing with any one of the departments.

Apart from that in such a unseemly quarrel between the two departments of the State of Andhra Pradesh on one hand and the Government of India and one of its instrumentalities (the petitioner) on the other hand, none of the officers concerned dealing with the matter ever thought it fit to have a comprehensive examination of the matter. Assuming that there is some dispute to be resolved having regard to the legal status of the parties, the Governments of the Union of India and the State and the instrumentality of the State (petitioner) and their respective constitutional duties and obligations, all of them should have taken note of the repeated caution given by the Supreme Court in no uncertain terms that in all such matters the dispute be resolved in accordance with law instead by means of appropriate deliberations of these various organs of the Constitutional government instead of rushing to the Courts involving considerable expenditure and wastage of public time. In **Oil and Natural Gas Commission v. Collector of Central Excise,** the Supreme Court held as follows :

> "**3.** This Court has on more than one occasion pointed out that Public Sector Undertakings of Central Government and the Union of India should not fight their litigations in Court by spending money on fees of counsel, court fees, procedural expenses and wasting public time. Courts are maintained for appropriate litigations. Court's time is not be consumed by litigations which are carried on either side at public expenses from the source. Notwithstanding these observations repeated on a number of occasions, the present cases appear to be an instance of total callousness."

Notwithstanding the repeated directions of the Supreme Court such as the one extracted above, the respondents kept on pushing the petitioner to this Court repeatedly in an area, which was really not necessary for this Court to be really involved. I therefore do not see any reason to grant any relief to the petitioner. The writ petition is therefore dismissed.

Insofar as the respondents are concerned, I deem it appropriate that though this Court declined to grant any relief in favour of the petitioner, the respondents be directed to pay costs of Rs. One Lakh each within a period of 21 days from today to the A.P. State Legal Services Authority.

Its further open to both Union of India and the State of Andhra Pradesh to collect the above amount from any one of the officers or all of them who are responsible for this mindless litigation all these years if either of the Governments so wish to collect it.

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pgs/knk 05.04.2006